



Billing Code 3410-08-P

## DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Docket No. FCIC-15-0002

RIN 0563-AC48

Common Crop Insurance Regulations; Texas Citrus Fruit Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations, Texas Citrus Fruit Crop Insurance Provisions, to provide policy changes to better meet the needs of policyholders, to clarify existing policy provisions, and to reduce vulnerability to program fraud, waste, and abuse. Specifically, this final rule modifies or clarifies certain definitions, clarifies unit establishment, clarifies substantive provisions for consistency with terminology changes, modifies the insured causes of loss, clarifies required timing for loss notices, modifies portions of loss calculation formulas, and addresses potential misinterpretations or ambiguity related to these issues. The changes will be effective for the 2018 and succeeding crop years.

DATES: This rule is effective [insert date 30 days after this rule is published in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO, 64141-6205, telephone (816) 926-7730.

## SUPPLEMENTARY INFORMATION:

### Background:

This rule finalizes changes to the Common Crop Insurance Regulations (7 CFR part 457), Texas Citrus Fruit Crop Insurance Provisions that were published by FCIC on January 12, 2016, as a notice of proposed rulemaking in the Federal Register at 81 FR 1337 – 1345. The public was afforded 60 days to submit comments after the regulation was published in the Federal Register.

A total of 26 comments were received from 4 commenters. The commenters were insurance providers, an insurance service organization, and a grower organization.

The public comments received regarding the proposed rule and FCIC's responses to the comments are as follows:

#### General

Comment: A commenter stated they agree with the proposed changes in the following sections: Definitions, Unit Division, Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities, Duties in the Event of Damage or Loss, and Settlement of Claim.

Response: FCIC appreciates the support for these changes.

Comment: Several commenters recommended changing the term “insured crop” to “citrus fruit group” throughout the Crop Provisions. For example, the commenters stated that section 2(a) indicates basic units will be established for each insured crop. However, since the definition of crop has been removed from these provisions, this can easily lead to confusion as to whether basic units can be by citrus fruit commodity, commodity type, or citrus fruit group. The background information from the proposed rule indicates the intent is that separate basic units will be established for each citrus fruit group because FCIC proposes to treat each citrus fruit group as a separate insured crop. Therefore, the commenter recommended that the word “crop”

be replaced by “citrus fruit group” which is the defined term in these Crop Provisions and the intent of these provisions based on the background information. This would then clearly indicate to anyone reading this provision as to the intent for how basic units are to be established and remove any ambiguities that currently exist by using the generic term “crop” which is not a defined term.

Response: FCIC agrees that in some instances it may be clearer to refer to the “citrus fruit group” in addition to the “insured crop.” FCIC has made this change in section 2 (unit division) and as appropriate throughout the Crop Provisions in the final rule. In addition to this change in section 2, FCIC has revised section 2(c)(2) by changing the phrase “non-contiguous land” to “if each optional unit is located on non-contiguous land.” This change is intended to provide clarification and is consistent with language contained in other crop insurance policies for perennial crops such as apples and peaches.

Comment: Several commenters stated that the proposed definitions of “citrus fruit commodity,” “citrus fruit group,” “commodity type” and other related revisions are part of the Acreage Crop Reporting Streamlining Initiative (ACRSI) and are similar to what was done in the 2014 Florida Citrus Fruit Crop [Insurance] Provisions proposed rule and the 2015 Arizona-California Citrus Crop Insurance Provisions proposed rule. Some of the concerns that were expressed in comments to the Florida Citrus Fruit Proposed Rule were addressed in the final rule responses, so these proposed changes are better understood this time around, though this is still a “work in progress.” The chart on page 1339 of the proposed rule is helpful in showing the expected groupings of citrus fruit commodities, commodity types, intended uses, and citrus fruit groups.

Response: In the proposed rule background, FCIC continued to address issues previously raised in the proposed rules for the Florida Citrus Fruit Crop Provisions and the Arizona-

California Citrus Crop Provisions, which contained some similar changes. FCIC appreciates hearing the ACRSI changes are better understood and that the background information from the proposed and final rules for the citrus crops has contributed to that increased understanding. FCIC has made no change to the final rule.

### Section 3 – Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

Comment: The last sentence in section 3(e)(3) states “We will reduce the yield used to establish your production guarantee for the subsequent crop year to reflect any reduction in the productive capacity of the trees or in the yield potential of the insured acreage.” Several commenters asked what if the event that occurred was something that only affects the crop for the year in question and has no carryover effect on the yield into the next crop year? The word “will” should be changed to “may” so that approved insurance providers have the flexibility to either reduce or not reduce the yield for the subsequent crop year depending on whether the effect of the damage will carry over to the subsequent year. The word “will” implies that the yield must be reduced even if the event that occurred will have no impact on the crop yield for the following year. This language needs to be revised to allow the approved insurance providers to have some flexibility in determining whether the approved APH yield should be reduced for the subsequent year. A commenter noted that FCIC responded to similar comments to the Peach Proposed Rule by saying that approved insurance providers already have that flexibility according to the opening statement [3(c) of the Peach Crop Provisions refers to reducing the yield “...as necessary, based on our estimate of the effect...”]. However, the commenter still has a concern with this language as proposed as the word “may” allows more flexibility to administer this provision. The commenter would like FCIC to confirm that if the event that occurred in the current crop year has been determined to have no yield impact for the subsequent year that approved insurance providers have the ability to not reduce the yield the subsequent

crop year even though this provision indicates that it must be reduced by using the word “will.”

A commenter noted that the draft version of these provisions prior to being published as a proposed rule did use the word “may” which is how this provision should be worded. The background information also indicates that this provision is similar to the provisions that FCIC recently added to other perennial crop policies such as the Arizona-California Citrus Crop Insurance Provisions. It should be noted that the Arizona-California Citrus Crop Insurance Provisions were published as a final rule and for this exact same policy provision used the word “may” rather than “will”. The commenter emphasized that FCIC should use the same language of “may” that was used in the final version of the Arizona-California Citrus Crop Insurance Provisions as this is the correct word to use and it will make the language in these provisions consistent with the language used in the Arizona-California Citrus Crop Insurance Provisions.

Response: As the language indicates, the provision only requires a yield reduction if a circumstance occurs that reduces productive capacity of the trees for the subsequent year. Use of the term “will” in the provision does not require a reduction in the yield if a reduction in productive capacity does not exist or is not expected for the subsequent year. FCIC has made no change to the final rule.

Comment: The provision in section 3(e) is proposed to be moved to section 3(f) with no other changes to the language in this provision. A commenter stated the language in this provision suggests that in the event of damage or changes to the grove, the yield is established by another method (appraisal of the potential of the insured acreage for the crop year). The commenter is concerned that as written, the provision is too vague and allows for different interpretations. The commenter requested FCIC provide further clarification/procedures of how and when this should be done. The commenter stated that it seems more clarification will be provided in the new 3(e), but not for the new 3(f).

Response: FCIC agrees that, relative to current changes, as currently worded this existing provision could be misinterpreted, especially the phrase “another method.” Although the provision only refers generically to the method described in the new paragraph 3(e), FCIC intends to minimize the risk of misinterpretation. This language is no longer needed with the addition of the new paragraph 3(e). Therefore, to prevent potential confusion FCIC is revising the provision in the final rule by removing the duplicative information.

#### Section 7 – Insured Crop

Comment: A commenter stated the provision in section 7(a) is beneficial to indicate that the insured crop will be each citrus fruit group but this still does not change the need to replace the term “crop” with “citrus fruit group” as recommended in various other sections of these Crop Provisions since this is the defined term.

Response: As stated in response to a previous comment, FCIC has revised the final rule by including the term “citrus fruit group” in addition to the term “insured crop” where appropriate.

Comment: Several commenters asked for clarification on what is meant by the term “previous year” in the newly designated section 7(a)(4) [previously section 7(d)] because there is a lag year for fruit production in the APH [Actual Production History]. For example, the commenter asked if “previous year” means the most recent year harvested or does it mean the last year of the database.

Response: The crop year for the Texas Citrus Fruit Crop Provisions spans more than one calendar year. The Crop Provisions require production reporting from two crop years ago for APH purposes because the prior crop year harvest is generally not completed before beginning of the next crop year. For this same reason, the minimum production requirement contained in the newly designated section 7(a)(4) is not typically assessed from the previous crop year.

Therefore, FCIC is revising this provision in the final rule to clarify that the provision refers to

the crop year reported in accordance with section 3(g), which is the crop year two years prior to the current crop year.

#### Section 8 – Insurable Acreage

Comment: Several commenters asked for clarification on the provisions in section 8 regarding whether a producer may have different fruit groups interplanted with each other, as any other citrus fruit group would qualify as “another perennial agricultural commodity.”

Response: The provision in section 8 states that a citrus fruit group planted with another perennial agricultural commodity is insurable unless we inspect the acreage and determine it does not meet the requirements contained in your policy. A citrus fruit group would typically qualify as a perennial agricultural commodity, under the “agricultural commodity” definition in the Basic Provisions. Therefore, a citrus fruit group interplanted with another citrus fruit group may be insurable unless an inspection reveals the citrus fruit group for which coverage is sought does not meet the policy terms. FCIC has made no change to the final rule.

#### Section 9 – Insurance Period

Comment: A commenter recommended removing “...during the 10-day period...” when the application is received between November 11 and November 21 from section 9(a)(1). The requirement that the approved insurance provider inspection must take place within a 10-day period is unnecessary and burdensome.

Response: The purpose of this language is allowing the approved insurance provider adequate time to determine insurability, such as performing an inspection, prior to insurance attaching if the application is received after November 11. While the provision references inspection authority, it does not necessarily require an inspection to be completed during the 10-day period. Therefore, FCIC disagrees this provision is burdensome. In addition, the proposed rule indicated no intended changes to this provision. However, FCIC wishes to further clarify

whether the provision is referring to the 10-day period between November 11 and November 21 or the 10-day period between the time the application is received and when insurance attaches, when those time periods are not the same. Therefore, FCIC has revised the provision in the final rule to clarify the 10-day period raised in the comment refers to the period that begins when the application is received, if it is received after November 11.

#### Section 10 – Causes of Loss

Comment: Several commenters asked for clarification on whether citrus canker (a disease affecting citrus species caused by the bacterium Xanthomonas axonopodis) is an insurable or uninsurable peril for Texas Citrus Fruit.

Response: Citrus canker is insurable under the revised Texas Citrus Fruit Crop Provisions unless excluded through the Special Provisions. FCIC currently does not intend to exclude citrus canker through the Special Provisions. FCIC has made no change to the final rule.

Comment: A commenter stated that producers may be concerned if there is a premium rate increase if citrus greening is added as an insurable cause of loss. Producers may want an option to opt out of this coverage.

Response: As stated in the background section of the proposed rule, FCIC intends to exclude citrus greening from insurability through the Special Provisions. FCIC does not foresee making coverage available for citrus greening. FCIC has made no change to the final rule.

Comment: A commenter stated the provisions in section 10 are of most concern to growers in Texas. The commenter asked if the new language is saying that citrus greening is covered. More importantly, the commenter asked what is covered. The commenter states it is very unclear. The commenter states that growers in Texas have many questions as to how changes to the cause of loss section will affect the premium rates. The commenter states it is impossible to plan without this information.



Response: As stated in the proposed rule, FCIC intends to exclude citrus greening from insurability through the Special Provisions. Therefore, citrus greening is not an insurable cause of loss because the Special Provisions are a part of the policy. Any insect or other plant disease not excluded through the Special Provisions will be insurable as long as the loss of production is not due to damage resulting from insufficient or improper application of control measures as recommended by agricultural experts. Presently, FCIC does not foresee excluding any other disease besides citrus greening. Although loss experience may impact premium rates, FCIC does not expect these current cause of loss changes to have an immediate impact on premium rates. Insects and plant disease were already insurable causes of loss under the Crop Provisions, provided they were linked to an insurable cause of loss under specific terms of the prior policy language. FCIC has made no change to the final rule.

Comment: Several commenters stated that producers do not harvest trees afflicted with citrus greening separately from trees that are not affected. Assessing the amount of production lost to citrus greening, an uninsurable cause, may be difficult if production is commingled. The commenters stated FCIC must develop procedures governing how to separate insurable damage from uninsurable damage.

Response: The current methods for assessing uninsured damage would apply equally to citrus greening. It is not uncommon for groves or trees within a grove to contain insurable damaged fruit, uninsurable damaged fruit, and undamaged fruit. However, FCIC will assess the impacts of the changes to these Crop Provisions and revise the loss adjustment procedures if necessary. FCIC intends to give approved insurance providers an opportunity to review and provide feedback on the proposed changes to the loss adjustment procedures prior to publication. FCIC has made no change to the final rule.

Comment: Several commenters stated they agree with the comments in the background

section made by FCIC regarding citrus greening and agree that citrus greening should be excluded as a cause of loss in the Special Provisions. The proposed provision in section 10(a)(9) also provides FCIC with the flexibility in the future to exclude additional causes of loss for insects or disease that should not be covered.

Response: FCIC appreciates the feedback and support for this proposed change. In addition to providing flexibility for excluding causes of loss, the Special Provisions also provide flexibility for providing additional information needed to determine other causes of loss such as excess wind. The proposed definition of “excess wind” was intended to allow additional weather reporting stations to be identified through the Special Provisions to be used to verify excess wind. However, FCIC has determined the proposed wording in the definition of “excess wind” could be misinterpreted to mean that the phrase “operating nearest to the insured acreage at the time of damage,” only applies to non-US National Weather Service stations identified in the Special Provisions. Therefore, FCIC has revised the definition of “excess wind” to clarify that the phrase “operating nearest to the insured acreage at the time of damage,” applies to both U.S. National Weather Service reporting station and any other weather reporting station identified in the Special Provisions.

#### Section 11 – Duties in the Event of Damage or Loss

Comment: Several commenters stated that section 11(a) indicates “we will determine which trees must remain unharvested so that we may inspect them in accordance with FCIC procedures.” This language could be difficult to administer without clear and concise guidance from FCIC in procedures. The background information for this section indicates that the FCIC intends to issue crop specific guidance for the approved insurance providers to use to instruct the insured on which trees must remain unharvested. The commenters requested FCIC make sure the procedures are clearly laid out to ensure this new section of the Crop Provisions is not unduly

difficult to administer. A commenter requested FCIC to confirm that in addition to the procedures being clear that they will also ensure they will not be unreasonably difficult for approved insurance providers to administer.

Response: As stated in response to a previous comment, FCIC will assess the impacts of the changes to the Crop Provisions and revise the loss adjustment procedures if necessary. FCIC will make every effort to ensure procedures are clear and unduly difficult for approved insurance providers to administer. FCIC intends to give approved insurance providers an opportunity to review and provide feedback on the proposed changes to the loss adjustment procedures prior to publication. FCIC has made no change to the final rule.

#### Executive Orders 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, “Regulatory Planning and Review,” and therefore, OMB has not reviewed this rule.

#### Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the collections of information in this rule have been approved by OMB under control number 0563-0053.

## E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

## Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, or the private sector. Agencies generally need to prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

## Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law..

## Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175

requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FCIC has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, FCIC will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by law.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, Pub. L. 104-121), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act or any other law, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10

acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act.

#### Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

#### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See 2 CFR part 415, subpart C.

#### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC directing the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

#### Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

## List of Subjects in 7 CFR Part 457

Crop insurance, Texas citrus fruit, Reporting and recordkeeping requirements.

### Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 effective for the 2018 and succeeding crop years as follows:

#### PART 457 - COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR Part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

2. Amend § 457.119 as follows:

- a. In the introductory text by removing “2000” and adding “2018” in its place;
- b. By removing the undesignated paragraph immediately preceding section 1;
- c. In section 1:
  - i. By adding in alphabetical order the definitions of “citrus fruit commodity,” “citrus fruit group,” “commodity type,” and “intended use”;
  - ii. By removing the definitions of “crop,” “local market price,” and “varieties”;
  - iii. In the definition of “crop year” by removing the term “citrus” and adding the term “insured” in its place;
  - iv. In the definition of “direct marketing” by adding the term “insured” directly preceding the term “crop” in the second sentence;
  - v. In the definition of “excess rain” by adding the term “insured” directly preceding the term “crop”;
  - vi. By revising the definitions of “excess wind,” “interplanted,” and “production guarantee (per acre)”;
- d. In section 2 by revising paragraphs (a) and (c);

e. In section 3:

i. In the introductory paragraph by removing the phrase “(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)” immediately following the words “section 3”;

ii. By revising paragraphs (a) and (b);

iii. In paragraph (d) introductory text by removing the term “type” and adding the phrase “commodity type and intended use” in its place;

iv. In paragraph (d)(4) by removing the phrase “perennial crop, and anytime” and replacing it with the phrase “agricultural commodity and any time”;

v. In paragraph (d)(4)(i) by removing the phrase “crop, and type” and adding the phrase “agricultural commodity and commodity type,” in its place;

vi. By redesignating paragraphs (e) and (f) as (f) and (g) respectively;

vii. By designating the undesignated paragraph following paragraph (d)(4)(iii) as paragraph (e); and

viii. By revising the newly designated paragraphs (e), (f) and (g);

f. In section 4 by removing the phrase “(Contract Changes)” immediately following the words “section 4”;

g. In section 5 by removing the phrase “(Life of Policy, Cancellation, and Termination)” immediately following the words “section 2”;

h. In section 6 by removing the phrase “(Annual Premium)” immediately following the words “section 7”;

i. In section 7 by:

i. Designating the undesignated introductory paragraph as paragraph (a) and redesignating paragraphs (a) through (f) as (a)(1) through (6) respectively;

ii. Revising the newly designated paragraph (a);



- iii. In the newly designated paragraph (a)(2) by removing the term “are” and adding the phrase “is grown on trees” in its place;
- iv. In the newly designated paragraph (a)(3) by removing the term “are” and adding the term “is” in its place;
- v. In the newly designated paragraph (a)(4) by removing the phrase “previous year” and adding the phrase “the crop year from two years prior reported in accordance with section 3(g)” in its place; and
- vi. Adding a new paragraph (b);
- j. Revise section 8;
- k. In section 9:
  - i. In paragraph (a) by removing the phrase “(Insurance Period)” immediately following the words “section 11”;
  - ii. By revising paragraph (a)(1); and
  - iii. In paragraph (b) by removing the phrase “(Insurance Period)” immediately following the words “section 11”;
- l. In section 10:
  - i. In paragraph (a) by removing the phrase “(Causes of Loss)” immediately following the words “section 12”;
  - ii. In paragraph (a)(7) by removing the word “or”;
  - iii. In paragraph (a)(8) by removing the period and adding “; or” in its place;
  - iv. By adding a new paragraph (a)(9); and
  - v. By revising paragraph (b);
- m. In section 11:
  - i. By redesignating paragraph (a) as (b)(1); and

- ii. By redesignating paragraph (b) as (b)(2) and revising the newly designated paragraph (b)(2);
- iii. By designating the undesignated introductory paragraph as paragraph (b) introductory text;
- iv. By adding a new paragraph (a); and
- v. In the newly designated paragraph (b) by removing the phrase “(Duties in the Event of Damage or Loss)” immediately following the words “section 14”;
- n. In section 12:
  - i. By revising paragraph (b)(1);
  - ii. In paragraph (b)(2) by removing the phrase “crop, or variety, if applicable” and adding the phrase “combination of commodity type and intended use” in its place;
  - iii. In paragraph (b)(4) by removing the phrase “variety, if applicable,” and adding the phrase “combination of commodity type and intended use” in its place;
  - iv. In paragraph (c)(1)(iv) by removing the term “crop” in all three places it appears and adding the term “insured crop” in its place;
  - v. In paragraph (d) by adding the phrase “insured with an intended use of juice” after the phrase “Any citrus fruit”; and
  - vi. By revising paragraph (e).

The revisions and additions read as follows:

§ 457.119 Texas citrus fruit crop insurance provisions.

\* \* \* \* \*

1. Definitions

Citrus fruit commodity. Includes the following:

(a) Oranges;

(b) Grapefruit; and

(c) Any other citrus fruit designated as a “citrus fruit commodity” in the actuarial documents.

Citrus fruit group. A designation in the Special Provisions used to identify combinations of citrus fruit commodity types and intended uses within a citrus fruit commodity that may be grouped together for the purposes of electing coverage levels and identifying the insured crop.

Commodity type. A specific subcategory of a citrus fruit commodity having a characteristic or set of characteristics distinguishable from other subcategories of the same citrus fruit commodity.

\* \* \* \* \*

Excess wind. A natural movement of air that has sustained speeds exceeding 58 miles per hour (50 knots) recorded at the weather reporting station (U.S. National Weather Service reporting station or any other weather reporting station identified in the Special Provisions) operating nearest to the insured acreage at the time of damage.

\* \* \* \* \*

Intended use. The insured’s expected end use or disposition of the commodity at the time the commodity is reported. Insurable intended uses will be specified in the Special Provisions.

Interplanted. In lieu of the definition contained in section 1 of the Basic Provisions, acreage on which two or more agricultural commodities are planted in any form of alternating or mixed pattern and at least one of these agricultural commodities constitutes an insured crop under these Crop Provisions.

Production guarantee (per acre). In lieu of the definition contained in section 1 of the Basic Provisions, the production guarantee will be determined by stage as follows:

\* \* \*

(b) Second stage production guarantee. The quantity of citrus (in tons) determined by

multiplying the yield determined in accordance with section 3(e) of these Crop Provisions by the coverage level percentage you elect.

\* \* \* \* \*

## 2. Unit Division

(a) Basic units will be established for each insured crop (citrus fruit group) in accordance with section 1 of the Basic Provisions.

\* \* \* \* \*

(c) Optional units may be established by either of the following, but not both:

(1) In accordance with section 34(c) of the Basic Provisions, except as provided in section 2(b) of these Crop Provisions; or

(2) If each optional unit is located on non-contiguous land.

## 3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election and coverage level for each insured crop (citrus fruit group designated in the Special Provisions) that you elect to insure.

(1) The price election you choose for each insured crop (citrus fruit group) need not bear the same percentage relationship to the maximum price offered by us for each insured crop (citrus fruit group). For example, if you choose one hundred percent (100%) of the maximum price election for one insured crop (citrus fruit group) (e.g., the citrus fruit group for early and midseason oranges), you may choose seventy-five percent (75%) of the maximum price election for another insured crop (citrus fruit group) (e.g., the citrus fruit group for late oranges).

(2) If separate price elections are available by commodity type or intended use within an insured crop (citrus fruit group), the price elections you choose within the insured crop (citrus fruit group) must have the same percentage relationship to the maximum price offered by us for

each other commodity type or intended use within the insured crop (citrus fruit group). For example, if separate price elections are available for commodity type ruby red grapefruit with an intended use of fresh, and commodity type ruby red grapefruit with an intended use of juice, and you choose one hundred percent (100%) of the price election for commodity type ruby red grapefruit with an intended use of fresh, you must also choose one hundred percent (100%) of the price election for commodity type ruby red grapefruit with an intended use of juice.

(b) The production guarantee per acre is progressive by stage and increases from the first stage production guarantee to the second stage production guarantee. The stages are as follows:

(1) The first stage extends from the date insurance attaches through April 30 of the calendar year of normal bloom.

(2) The second stage extends from May 1 of the calendar year of normal bloom until the end of the insurance period.

\* \* \* \* \*

(e) We will reduce the yield used to establish your production guarantee, as necessary, based on our estimate of the effect of any circumstance that may reduce your yields from previous levels. Examples of these circumstances that may reduce yield may include, but are not limited to: interplanted agricultural commodities; removal, topping, hedging, or pruning of trees; damage; and change in practices. If the circumstance occurred:

(1) Before the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee will be reduced for the current crop year regardless of whether the circumstance was due to an insured or uninsured cause of loss;

(2) After the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee will be reduced for the current crop

year only if the potential reduction in the yield used to establish your production guarantee is due to an uninsured cause of loss; or

(3) Before or after the beginning of the insurance period and you fail to notify us by the production reporting date, an amount equal to the reduction in the yield will be added to the production to count calculated in section 12(c) of these Crop Provisions due to uninsured causes. We will reduce the yield used to establish your production guarantee for the subsequent crop year to reflect any reduction in the productive capacity of the trees or in the yield potential of the insured acreage.

(f) The yield used to compute your production guarantee will be determined in accordance with Actual Production History (APH) regulations, 7 CFR part 400, subpart G, and applicable policy provisions.

(g) In lieu of the provisions in section 3 of the Basic Provisions that require reporting your production for the previous crop year, for each crop year you must report your production from two crop years ago (e.g., on the 2018 crop year production report, you will provide your 2016 crop year production).

\* \* \* \* \*

## 7. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the insured crop will be each citrus fruit group you elect to insure and for which a premium rate is provided by the actuarial documents:

\* \* \* \* \*

(b) For each insured crop (citrus fruit group), administrative fees will be assessed in accordance with section 6 of the Catastrophic Risk Protection Endorsement and section 7 of the Basic Provisions.

## 8. Insurable Acreage

In lieu of the provisions in section 9 of the Basic Provisions that prohibit insurance attaching to an insured crop interplanted with another agricultural commodity, interplanted acreage is uninsurable, except a citrus fruit group interplanted with another perennial agricultural commodity is insurable unless we inspect the acreage and determine it does not meet the requirements contained in your policy.

\* \* \* \* \*

## 9. Insurance Period

(a) \* \* \*

(1) Coverage begins on November 21 of each crop year, except that for the year of application, if your application is received after November 11 but prior to November 21, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10-day period that begins when the application is received by us and determine that it does not meet insurability requirements. You must provide any information that we require for the insured crop (citrus fruit group) or to determine the condition of the grove.

\* \* \* \* \*

## 10. Causes of Loss

\* \* \* \* \*

(a) \* \* \*

\* \* \* \* \*

(9) Insects and plant disease, unless excluded or otherwise restricted through the Special Provisions, provided the loss of production is not due to damage resulting from insufficient or improper application of control measures as recommended by agricultural experts.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to the inability to market the citrus for any reason other than actual physical damage from an insurable cause of loss specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

#### 11. Duties in the Event of Damage or Loss

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples. In lieu of the requirements of section 14(c)(3) of the Basic Provisions, we will determine which trees must remain unharvested so that we may inspect them in accordance with FCIC procedures.

(b) \* \* \*

\* \* \* \* \*

(2) If you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest, or within 24 hours if damage is discovered during harvest, so we may have an opportunity to inspect the unit. You must not sell or dispose of the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section, all such production will be considered undamaged and included as production to count.

#### 12. Settlement of Claim

\* \* \* \* \*

(b) \* \* \*

(1) Multiplying the insured acreage for each combination of commodity type and intended use by its respective production guarantee;

\* \* \* \* \*



(e) Any citrus fruit insured with an intended use of fresh that is not marketable as fresh fruit due to insurable causes will be adjusted by multiplying the number of tons of such citrus fruit by the applicable Fresh Fruit Factor contained in the Special Provisions.

\* \* \* \* \*

Signed in Washington, D.C., on June 6, 2016.

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Michael Alston  
Acting Manager  
Federal Crop Insurance Corporation  
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